

NOT REPORTABLE

CASE NO. CA 85/09

IN THE HIGH COURT OF NAMIBIA

In the matter between:

BENEDICTUS JEREMIA TIBOTH

APPELLANT

and

THE STATE

RESPONDENT

CORAM: HOFF, J *et* VAN NIEKERK, J

Heard on: 05 November 2010

Delivered on: 05 November 2010 (Ex *tempore*)

APPEAL JUDGMENT

HOFF, J: [1] The Appellant was convicted in the Magistrate Court in Grootfontein of contravening Section 8(1) of Ordinance 12 of 1956, i.e. the use of a motor vehicle without the owner's consent and of the common law crime of malicious damage to property. He was convicted on the 23rd of April 2001. On the 1st count, he was sentenced to four hundred Namibian Dollars (N\$400-00) or four months imprisonment.

On the count of malicious damage to property to six hundred Namibian Dollars (N\$600-00) or six months imprisonment.

[2] The Appellant appealed against the convictions as well as the sentences imposed.

[3] It is common cause that due to various reasons, inter alia, because the Magistrate who presided is no longer employed by the Ministry of Justice, the record cannot at this stage be reconstructed.

[4] It further appears that, there was a formal defect in the proceedings, as the cassettes that were used during the proceedings, did not record the proceedings in Court.

[5] In the circumstances, the convictions and the sentences stand to be set aside and this Court therefore orders that the convictions as well as the sentences imposed be set aside. The Prosecutor General has the prerogative to decide, to institute criminal proceedings afresh against the Appellant.

I agree

VAN NIEKERK, J

ON BEHALF OF THE APPELLANT:

MR SWARTS

Instructed by:

SWARTS & BOCK LEGAL PRACTITIONERS

ON BEHALF OF THE RESPONDENT:

MR KONGA

Instructed by:

OFFICE OF THE PROSECUTOR-GENERAL